

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION**

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: right;"><i>Respondent,</i></p> <p>v.</p> <p>RODNEY WAYNE BARNES,</p> <p style="text-align: right;"><i>Petitioner.</i></p>	<p>CASE NO. 3:10-cr-00032-1</p> <p><u>MEMORANDUM OPINION</u></p> <p>JUDGE NORMAN K. MOON</p>
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This Court previously denied Petitioner’s original motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. (Dkt. 431). Petitioner filed a motion for reconsideration (Dkt. 438), which was denied. (Dkt. 447). This Court’s denial of Petitioner’s Section 2255 motion was affirmed on appeal. (Dkt. 455). Petitioner then filed another motion for reconsideration of this Court’s ruling, after it had been affirmed on appeal. (Dkt. 461). The Court denied Petitioner’s motion because this Court had no jurisdiction to reconsider the original 2255 motion and because Petitioner had not made the requisite showing to warrant a certificate of appealability. (Dkt. 509). Petitioner then filed yet another motion to reconsider, raising the same argument. (Dkt. 511). This was subsequently denied (Dkt. 515) after the Court determined that the Rule 60(b) motion attacked the substance of the federal court’s resolution and therefore should be treated as a successive habeas petition.

“[A] Rule 60(b) motion in a habeas proceeding that attacks the substance of the federal court’s resolution of a claim on the merits is not a true Rule 60(b) motion, but rather a successive habeas petition.” *United States v. McRae*, 793 F.3d 392, 397 (4th Cir. 2015) (citation omitted). This Court previously “considered, and dismissed, [Petitioner’s] claim that counsel’s advocacy was deficient with regard to the drug weight calculation,” and so this is a successive habeas

petition. (Dkt. 509, 515). But “[a] successive habeas petition may not be filed in district court without preauthorization from a court of appeals under § 2244(b)(3)(A).” *McRae*, 793 F.3d at 397. Petitioner’s motion for reconsideration (Dkt. 560), will be dismissed without prejudice as successive. Because Petitioner still has not made the requisite substantial showing of denial of a constitutional right as required by 28 U.S.C. § 2253(c), a certificate of appealability will be denied.

The Clerk of the Court is directed to send a certified copy of this memorandum opinion and the accompanying order to the parties and strike this action from the active docket of this Court.

Entered this 8th day of October, 2020.



NORMAN K. MOON
SENIOR UNITED STATES DISTRICT JUDGE